



Kentucky Board of Examiners of Psychology Newsletter

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Summer 2005

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MEET THE BOARD
Andrew B. Jones, Ph.D.

Dr. Andrew Jones, appointed to the Board in November, 2003, brings with him a wealth of both teaching and clinical experience. Born in Pittsburgh and raised in Detroit, he obtained a B.A. in Psychology from the University of Michigan in Ann Arbor. He then went on to Washington University in St. Louis to study under Dr. Robert L. Williams, a renowned psychologist and critic of IQ tests as biased against minorities. There, Dr. Jones obtained an M.A. in Psychology with a specialty in minority mental health.

Dr. Jones was then recruited to the University of Louisville on an NIMH fellowship, where he was the first African-American male at U of L's Clinical Psychology program. He obtained an M.A. in Clinical Psychology from U of L and continued on to receive his Ph.D. from the Union Institute in Cincinnati, Ohio. He rounded out his formal training and education to date by obtaining a Certificate in Behavior Analysis from the University of North Texas in Denton, Texas.

Dr. Jones' professional employment history is equally impressive and extensive. He began his psychological career as a therapist for Seven Counties Services in Louisville and went on to work at KCPC at the Luther Luckett Correctional Complex. He subsequently worked as a staff psychologist and then department chair at Hazelwood Center, an intermediate care facility for individuals with profound to moderate mental retardation. While an employee of the Commonwealth, he became a certified public manager. Dr. Jones has worked as a consultant for Lincoln Trail hospital and as a behavior specialist and psychologist for the Alternative Intermediate Services program at Communicare which serves MR/DD clientele. He also served as primary evaluator for the First Steps Program for infants, toddlers, and preschoolers.

Currently, in addition to his responsibilities at KBEP, Dr. Jones teaches at IU Southeast and McKendree College, maintains a small private practice with Frager Associates, performs evaluations for the Jefferson County Board of Education and the Dept. of Disability Determinations, and does some EAP work. Dr. Jones is also a self-proclaimed audiophile with a particular fondness for jazz. In his high school and college days, he earned supplemental income drag racing. He still loves the sport, but only as a spectator. (His sleek Corvette attests to his continued appreciation of high performance automobiles!) When Dr. Jones is not commuting from one work site to another, he is at home in Crestwood, where he cares for a Siberian Husky puppy and is looking forward to the responsibility of raising a 150 lb. rescued German Shepherd.

NEWS FROM ASPPB

Dr. Kim Jonason, former KBEP member and chair, is now President of ASPPB. Printed below are excerpts from his President's Message in the March, 2005 ASPPB Newsletter.

"As I write this column, our organization is well into a critical period of transition.... Randy Reaves [Executive Officer and General Counsel] has left ASPPB after 25 years of dedicated service.... A change in the chair of the ASPPB Examination Committee represents an additional important transition and challenge.... The new Examination Committee Chair [replacing Dr. Lynn Rehm] will be Dr. Joan Grusec from the University of Toronto.... The ASPPB Board of Directors has engaged the services of Robert T. Van Hook, MSPH, CAE, of Transition Management Consulting, Inc., as Interim Executive Officer.

The Board and staff have recently completed the first phase of our strategic planning initiative.... Major overriding themes:

1. Providing high quality services to member boards in a manner responsive to their needs.
2. A priority-driven focus on program outcomes with a continuous focus on assessment and improvement, and
3. Fostering a work environment of the highest ethical standards, one that promotes teamwork, mutual respect and trust among colleagues with open communications, participative management and transparent decision making.

Finally, it is the organization's service programs that have made ASPPB what it is today.... ASPPB's many committees are meeting and providing much-valued products and assistance [including]:

1. an excellent new website, in the final stages of completion
2. a long-promised update of the Handbook of Licensing and Certification requirements which can now be accessed free of charge on the website
3. a new and improved database for processing of CPQ applications and the storage of CPQ applicant information
4. a new Mobility Chair, Past-President Barb Van Horne
5. ASPPB has joined with the National Register in developing criteria for designating training programs in psychopharmacology through the ASPPB/NR Joint Designation Project...."

In this issue:

Meet the Board – Andrew B. Jones, Ph.D.
News from ASPPB
Recent Disciplinary Actions
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Board Disciplinary Actions

The following is a summary of disciplinary actions taken against credential holders by the Board since the last Newsletter. This summary is intended for informational purposes only. All information is believed to be accurate; however, complete terms of each disciplinary action are contained in the Board's written records.

William F. Gross, Ph.D.

August 2, 2004

Settlement Agreement

The Kentucky Board of Examiners of Psychology adopted a settlement agreement suspending Gross' license to practice psychology in Kentucky for a period of no less than three years. Gross is prohibited from applying for reinstatement before August 2, 2007. Gross was ordered to pay \$1,440 for administrative costs to the Board. An initial complaint filed by a citizen resulted in the disciplinary action, which is a matter of public record under the Kentucky Open Records law. Verification may be obtained by writing from John Parrish, Director, Division of Occupations and Professions, 911 Leawood Dr., Frankfort, KY 40602.

Shana S. Langley, M.A.

August 2, 2004

Settlement Agreement

On Aug. 2, 2004, disciplinary action was taken against Shana S. Langley, M.A., from Glasgow, Kentucky. The Kentucky Board of Examiners of Psychology adopted a settlement agreement suspending Langley's license to practice psychology in Kentucky for two years. Langley was placed on probation with two years of supervision to stay the suspension. She was ordered to pay \$1,250 for administrative costs to the Board. The disciplinary action is a matter of public record under the Kentucky Open Records law. Verification may be obtained by writing from John Parrish, Director, Division of Occupations and Professions, 911 Leawood Dr., Frankfort, KY 40602.

James H. McDannel, Ph.D.

August 2, 2004

Cease and Desist Affidavit

On October 4, 2004, the Kentucky Board of Examiners of Psychology accepted a Cease and Desist Affidavit from James H. McDannel, Ph.D., from Whitesburg, Kentucky. Dr. McDannel, a professor at Southeast Kentucky Community and Technical College was determined by the Board to have practiced psychology without a license from this Board.

Peggy Kidwell Ph.D.

February 7, 2005

Cease and Desist Affidavit

On February 7, 2005, the Kentucky Board of Examiners of Psychology accepted a Cease and Desist Affidavit from Peggy Kidwell, Ph.D., from Louisville, Kentucky. Dr. Kidwell was determined by the Board to have practiced psychology without a license from this Board.

CHANGES IN KENTUCKY ADMINISTRATIVE REGULATIONS

RELATED TO KRS 319

By Henry S. Davis, Ph.D., Chair

Changes in Kentucky Administrative Regulations Related to KRS 319

For approximately a year, the Kentucky Board of Examiners of Psychology has been working on revising the Administrative Regulations as they apply to the practice of psychology in Kentucky. These revisions have now been approved and are effect, as of March 8, 2005. A copy of the current Administrative Regulations are available for your review on the Board of Examiners website at <http://finance.ky.gov/ourcabinet/caboff/OAS/op/psychbd/>. They are available in pdf format under Laws and Regulations Booklet for download or printing. We encourage all psychologists to review these regulations.

While many of the changes are to improve the clarity or organization of the regulations, some revisions make substantive changes in how psychology is to be practiced in the Commonwealth. Some of these changes are:

201 KAR 26:175 has been revised to require a minimum of three hours on continuing education in either ethical practice or risk management within each three year renewal period.

201 KAR 26:155, 230, & 280 clarifies the timelines and procedures for pursuing licensure. The time limit within which one must complete the examinations for licensure is now tied to when temporary licensure is granted. For example, an applicant has one year from the date of approval for a temporary license to successfully pass the EPPP.

201 KAR 26:171 has been revised to eliminate a specific month for submitting the supervisory report for temporary licensed psychological associates.

201 KAR 26:145 has been revised to make records retention consistent with HIPAA requirements.

201 KAR 26:165 establishes the beginning of Inactive Status, when granted, to be the date of expiration of the current period of licensure.

Again we encourage all psychologists to review the Kentucky Administrative Regulations as they relate to the practice of psychology under Kentucky Revised Statute 319.☞

ASPPB 44TH ANNUAL MEETING OF DELEGATES

By S. Abby Shapiro, Ph.D.

Drs. Henry Davis and Abby Shapiro attended ASPPB's 44th annual meeting of delegates in Atlanta, Georgia in October, 2004. The purpose of the annual meeting is twofold: 1) to conduct the business of ASPPB and elect new officers; and 2) to provide education, training, and information to delegates. The theme of this meeting was "Promoting Wellness Within the Profession of Psychology." As Barbara A. Van Horne, MBA, Ph. D., then President of ASPPB, noted: "...addressing impairment and protection of the consumer are intricately intertwined." Undoubtedly the most stirring presentation was by Dr. Michael Garver, a Georgia dentist whose substance abuse led to a felony conviction, loss of his license, and loss of his family. Due to his motivation, the dedication of friends and colleagues who believed in him, and flexibility on the part of his licensing board, he has been able to recover, return to his profession, and experience a quality of life he had never thought possible. The two critical keys were his willingness to receive the guidance and support he needed and his licensing board's willingness to work with him while still insuring the protection of the public.

ASPPB 20TH MIDYEAR MEETING

By Andrew Meyer, Ph.D.

Richard Applegate, M.A., Jack Runyon, M.S., Andy Meyer, Ph.D., Kim R. Jonason, Ph.D. attended the 20th Midyear Meeting of the Association of State and Provincial Psychology Boards (ASPPB) April 7-10 in Portland Oregon. The topic of this year's meeting was "Identifying and Managing Pre-Licensure Character and Fitness Issues." The format of the meeting was to have experts present on various topics such as, Addressing competency problems during training, legal and legislative updates, and models of practice in law and psychology. Breakout sessions followed the presentations and gave the participants an opportunity to discuss issues common across jurisdictions and specific approaches to addressing these concerns.

The Kentucky Board of Examiners of Psychology attendees also participated in New Board Member Orientation Meetings, Part I and II. These sessions were particularly helpful to our board members who are serving in this capacity for the first time.

Kentucky was very well represented at ASPPB. In addition to the current board members, Kim Jonason, Ph.D. serving as President, Stephen DeMers, Ed.D. in his role as Director of Professional Affairs, and Charles Morgan, Ph.D. participating as an Individual Member, were in attendance.

Board Committees for 2005

Complaint

Richard Applegate, Chair
Diane Sobel
Abby Shapiro

Supervision

Jack Runyon, Chair
Andy Meyer
Barbara Jefferson

Examinations

Henry Davis, Chair
Barbara Jefferson

Credentials

Barbara Jefferson, Chair
Andy Meyer
Jack Runyon

Continuing Education

Andrew Jones, Chair
Andy Meyer

New Independent Practitioners in the Commonwealth of Kentucky

Licensed Psychologists

Timothy Lee Baggs
Kathryn Leigh Baldwin
Stephen Kent Bliss
Kathryn Thor Boggs
Melissa A. Boyles
Judith Elizabeth Campbell
Peter Cimolic
Joey Allen Collins
Keith Henderson Crabtree
Gary M. Cusick
Janet Blevins Dean
Molly S. Dye
Dan Florell
Karen Lasseter Grantz
Scott M. Salathe
Tanya F. Stockhammer
Rebecca S. Tabony

Kristi Dove Graves
Amy Baur Greenamyer
Ralph Greene, Jr.
Jennifer L. Grieme Haaga
Melissa Blundell Hakman
Heather Park Hatchett
Peggy M. Henderson
Heather Jo Henderson-Gallig
Royce Nikolsky Jalazo
Lora Lyons Johnson
Stephen K. Johnson
Rita Jungblom
Patricia A. Karpinski
Shari Lynn Kidwell
Kimberly Iris Saylor
Steven A. Stwertka
Gerald A. Walker

Kenneth Kirsh
Kathleen Ray LaJoie
Susan Annette Lear
Holly Nicole Ludwig
Theresa D. Lupcho
Frances Janelle McNeal
Diane Murray
Juliette Sigel Murray
Robert Douglas Olds
John Craig Parkhurst
Gregory D. Perri
Kate V. Perryman
Sean Patrick Reilley
Linda M. Palmer Rice
Stephanie Shain Smith
Jennifer Lynn Sudbrack
Kristi Tenille Yarbrough

Licensed Psychological Practitioners

John Adam Barmore
Constance Gail Beaman
Nina L. Begley
Jody R. Blackburn
Eileen E. Coen
Kecia E. Fulcher
Katrina R. Lewis
Melody Estelle Marley
Genie McFall
Steven D. Middleton
Edward J. Morris
Phillip E. Pack
Gregory Wm Renzenbrink
Michelle Strange Rice
Shelly Ritchie
Vande K. Slonecker
Donna C. Smith
Marcy E. Walpert
Madelyn A. Worley

OPINION & DECLARATORY RULINGS

From time to time, KBEP issues Opinion & Declaratory Rulings related to interpretation of KRS 319 or in response to changes in the APA Ethical Standards or other changes in federal or state laws. Below you will find two such recent rulings. These and any future rulings that might be issued are also available at the KBEP website (<http://finance.ky.gov/ourcabinet/caboff/OAS/op/psychbd/>).

OPINION AND DECLARATORY RULING REGARDING W-2 VERSUS 1099 EMPLOYMENT STATUS FOR LICENSED PSYCHOLOGICAL ASSOCIATES

The Board has been asked to interpret KRS 319.064 (5) regarding whether psychological associates who perform work under the psychology practice of their supervising psychologist may practice psychology under the relationship characterized between the psychological associate and supervising psychologist as a Contractor ("1099") relationship versus a statutory employee for which an employer issues a "W-2" to such employee for purposes of the Internal Revenue Service.

"1099" status reflects, according to the IRS, an independent contractor relationship in which the employer defines the job outcome but does not have control over the actual, day-to-day or moment-to-moment tasks and functions of the employee; nor is there any ongoing supervision of the matter.

Not only does a supervising psychologist direct and become accountable for single outcomes of the psychological associate (such as completion of a psychological report, performance of psychological testing, etc.), the supervisor is also charged with the responsibility for the entire practice of psychology of the psychological associate, and all the processes the psychological associate uses to perform a task constituting the practice of psychology. This necessarily involves control over all the tasks and functions of the psychological associate.

KRS 319.064 (5) allows a psychological associate to "perform certain functions within the practice of psychology only under the supervision of a licensed psychologist approved by the Board." Moreover, this same statute prohibits the "independent practice" of the psychological associate, except while "under the employment and supervision of the Board-approved licensed psychologist." The Board interprets its law regarding "employment and supervision" to extend not only to the final work product of the psychological associate, but also to all the tasks and functions of the psychological associate, which must be under the "employment and supervision of" the licensed psychologist. Therefore, the status of a psychological associate as a "1099" employee does not reflect the employment and supervision as intended in KRS 319.064 (5) and is not allowed under KRS Chapter 319.

Furthermore, the Code of Conduct, delineated in KRS 319.032 (1)(c), prohibits a potentially exploitative relationship between a supervisor and supervisee (201 KAR 26:155 (6)). In addition to the independent practice nature of a Contractor ("1099") relationship, in such a relationship, the supervisor has no responsibility for the tax liability or unemployment expenses of the supervisee. In a "W-2" relationship, the supervisor is responsible for withholdings (social security, FICA, local taxes, etc.), workers' compensation, and unemployment fees. Thus, a Contractor ("1099") relationship could, under these circumstances, be construed as inherently exploitative and, therefore, as a violation of the Code of Conduct.

OPINION & DECLARATORY RULING REGARDING RELEASE OF RAW TEST DATA

This correspondence is in response to a change in the Ethical Standards of the American Psychological Association regarding the release of raw psychological test data to clients which was necessitated by the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

In a prior Opinion & Declaratory Ruling, the Kentucky Board of Examiners of Psychology concluded that psychologists credentialed by the Board must follow the Code of Ethics of the American Psychological Association (1992) and must not release raw psychological test data directly to clients. The Board's Code of Conduct, 201 Kentucky Administrative Regulation (KAR) 26:145 Section 10(1) mandates that "the credential holder shall treat an assessment result or interpretation regarding an individual as confidential information." Furthermore, the credential holder is bound to ensure the "protection of integrity of assessment procedures. 201 KAR 26:145 Section 10(2). In its prior Opinion and Declaratory Ruling, the Board concluded that the raw, psychological data must not be disclosed directly to the patient, but only to "other credentialed mental health professionals who have training and experience in psychological testing."

OPINION & DECLARATORY RULING Regarding Release of Raw Test Data

The 2002 APA Ethical Standards (effective June 1, 2003) supersede the 1992 Code. The change in the Code results in the Board Ruling regarding the release of psychological test data being in conflict with current standards of practice for psychologists as set forth by the 2002 APA Ethical Standards.

This correspondence is an opinion of the Board based solely on the facts summarized below. The Board has authorized this opinion as an Opinion and Declaratory Ruling pursuant to KRS 13A. 130(3) and KRS 13A .010(2)(b) as the agency with jurisdiction to interpret the statutes and regulations in KRS Chapter 319 and 201 KAR Chapter 26 which govern the practice of psychology in the Commonwealth of Kentucky. *(Cont. page 5)*

I. Whether a psychologist may release raw psychological test data directly to clients.

(Cont. from page 4)

In performing psychological testing of clients, psychologists interpret the raw test data from administration of the psychological test(s). That raw test data is mandated to be retained by the psychologist under the Board's Code of conduct, 201 KAR 26:145 Section 3(6)(a)4. ("The credential holder rendering professional services to an individual client, or services billed to a third-party payor, shall maintain professional records that include: . . . Test results or other evaluative results obtained and the basic test data from which the results were derived.")

Such psychological tests are part of various psychological assessment procedures that are routinely used by psychologists in the practice of psychology.

Other provisions of law mandate that a "healthcare provider," which the board interprets clearly includes psychologist credentialed by the Board, provide one (1) copy of a clients' record without charge. KRS 422.317 (1) states in relevant part:

Upon a patient's written request, . . . a health care provider shall provide, without charge to the patient, a copy of the patient's medical record. A copying fee, not to exceed one dollar (\$1.00) per page, may be charged by the health care provider for furnishing a second copy of the patient's medical record upon request either by the patient or the patient's attorney or the patient's authorized representative.

The issues thus arises as to whether the client is entitled to the raw psychological test data as part of the client's "medical record" as mandated by KRS 422.317

The Board is of the opinion that the Board's own Code of Conduct governs the psychologist's duty in addition to KRS 422.317. 201 KAR 26: 145 Section 10(2) states: "Protection of integrity of assessment procedures. The credential holder shall not reproduce or describe in a popular publication, lecture, or public presentation of a psychological test or other assessment device in a way that might invalidate them."

According to 201 KAR 26:145 Code of Conduct Section 7 (8) Release of confidential information. The credential holder shall release confidential information upon court order or to conform with state or federal law or regulation.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires that a health care provider also make available a copy of the patient's health care record to the patient upon request. The newly effective APA Ethical Principles reflect these mandates.

According to the American Psychological Association *Ethical Principles of Psychologists and Code of Conduct* (December 2002) ETHICAL STANDARDS: 9. ASSESSMENT

9.04 Release of Test Data

(a) The term *test data* refers to raw and scaled scores, client/patient responses to test questions or stimuli, and psychologists' notes and recordings concerning client/patient statements and behavior during an examination. Those portions of test materials that include client/patient responses are included in the definition of *test data*. Pursuant to a client/patient release, psychologists provide test data to the client/patient or other persons identified in the release. Psychologists may refrain from releasing test data to protect a client/patient or others from substantial harm or misuse or misrepresentation of the data or the test, recognizing that in many instances releases of confidential information under these circumstances is regulated by law. (See also Standard 9.11, Maintaining Test Security)

(b) In the absence of a client/patient release, psychologists provide test data only as required by law or court order.

9.11 Maintaining Test Security

The term *test materials* refers to manuals, instruments, protocols, and test questions or stimuli and does not include *test data* as defined in Standard 9.04, Release of Test Data. Psychologists make reasonable efforts to maintain the integrity and security of test materials and other assessment techniques consistent with law and contractual obligations, and in a manner that permits adherence to this Ethics Code.

As set forth above, the APA has differentiated between "test data" and "test materials." The APA now concludes that, in accord with HIPAA, a psychologist must release the test data, as defined above, but shall not release the test materials, which would, of course, invalidate the use of that psychological test. Consistent with this interpretation, the Board now interprets its Code of Conduct to allow the credential holder to release test data, but not to release test materials.

II. Conclusion.

As the agency authorized by the Kentucky General Assembly to regulate the practice of psychology in this state, the Board is empowered to interpret its statutes and regulations. In summary, psychologists credentialed by the Board must follow the Code of Conduct and must release raw psychological test data directly to clients and in accord with KRS 422.317 and the requirements of HIPAA. However, in such release, reasonable efforts must be made to maintain the integrity and security of test material and other assessment techniques consistent with law and contractual obligations. A credential holder in Kentucky shall not release test material in order to ensure the "protection of the integrity of assessment procedures." 201 KAR 26:145 Section 10.

Kentucky Board of Examiners of Psychology
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